

**Interlocal Agreement
Regarding Asset Forfeitures within Hays County**

STATE OF TEXAS §

COUNTY OF HAYS §

Pursuant to the provisions of Chapter 59 of the Texas Code of Criminal Procedure, which regulates the disposition of property forfeited to the State of Texas as contraband, and pursuant to Chapter 791 of the Texas Government Code, which regulates the execution of interlocal cooperation agreements, the Hays County Sheriff's Office, the San Marcos Police Department, the Kyle Police Department, the Buda Police Department, the Hays County Narcotics Task Force, the Texas State University Police Department (referred to herein as the "Agency"), and the Hays County Criminal District Attorney (referred to herein as "the Attorney Representing the State") enter into this agreement ("Agreement") regarding the disposition of said property or the proceeds from the sale thereof. The Agency and the Attorney Representing the State are collectively referred to in this Agreement as the "Parties."

I. Forfeited Property Under Chapter 481, Health and Safety Code, and Chapter 59, Texas Code of Criminal Procedure

With respect to all forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code ("the Texas Controlled Substances Act"), and all other property seized by the Agency and forfeited in a proceeding under Article 59.05 of the Texas Code of Criminal Procedure, in consideration of the services rendered by the Parties to this Agreement for the seizure and forfeiture of the said contraband, the Agency that seizes contraband or otherwise forfeitable property (hereinafter "the Seizing Agency" whether one or more) and the Attorney Representing the State agree as follows, after the deduction of applicable court costs:

- A. No Answer Filed. The Seizing Agency shall retain 70%, to be deposited in the Seizing Agency's fund, and the Attorney Representing the State shall retain 30%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where no answer is filed for a forfeiture hearing and a default judgment is rendered in favor of the State. This section is applicable to violations of the Texas Controlled Substances Act and any other pertinent statute;
 - a. Hays County Narcotics Task Force Case. Provided that the Hays County Narcotics Task Force is comprised of San Marcos Police Department officers and Hays County Sheriff's Office deputies, the 70% proportion of proceeds retained by the Hays County Narcotics Task Force shall be divided between the San Marcos Police Department and the Hays County Sheriff's Office as follows: 35% to the San Marcos Police Department, and 35% to the Hays County Sheriff's Office.

- B. Answer Filed.** The Seizing Agency shall retain 60%, to be deposited in the Seizing Agency's fund, and the Attorney Representing the State shall retain 40%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where an answer is filed for a forfeiture hearing. This section is applicable to violations of the Texas Controlled Substances Act and any other pertinent statute; or
- a. Hays County Narcotics Task Force Case. Provided that the Hays County Narcotics Task Force is comprised of San Marcos Police Department officers and Hays County Sheriff's Office deputies, the 60% proportion of proceeds retained by the Hays County Narcotics Task Force shall be divided between the San Marcos Police Department and the Hays County Sheriff's Office as follows: 30% to the San Marcos Police Department, and 30% to the Hays County Sheriff's Office.
- C. Trial Commences.** The Seizing Agency shall retain 50%, to be deposited in the Seizing Agency's fund, and the Attorney Representing the State shall retain 50%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where a trial on the forfeiture hearing commences. This section is applicable to violations of the Texas Controlled Substances Act and any other pertinent statute.
- a. Hays County Narcotics Task Force Case. Provided that the Hays County Narcotics Task Force is comprised of San Marcos Police Department officers and Hays County Sheriff's Office deputies, the 50% proportion of proceeds retained by the Hays County Narcotics Task Force shall be divided between the San Marcos Police Department and the Hays County Sheriff's Office as follows: 25% to the San Marcos Police Department, and 25% to the Hays County Sheriff's Office.
- D. Vehicles to be Auctioned.** In the event a Seizing Agency desires to auction a vehicle seized as contraband, the following procedure shall be in effect:
- a. (1) The Attorney Representing the State shall confirm with the Seizing Agency that the Agency wishes to auction the vehicle; (2) The Attorney Representing the State shall proceed with drafting the Final Judgment of Forfeiture and deliver it to a judge for signature; (3) Upon auction, the Seizing Agency shall remit an auction receipt to the Attorney Representing the State providing the proceeds derived from the auction of the vehicle; and (4) the Attorney Representing the State shall then receive payment, made payable to "Hays County" and delivered to the Hays County District Attorney's Office from buyer of vehicle at said auction; (5) the calculated percentages to be disbursed from the Hays County District Attorney's office (as determined from the percentage breakdowns in sections (I)(A)-(C) above) shall be made on the next disbursement issued by the Attorney Representing the State.

E. Vehicles Put into Service. In the event a Seizing Agency desires to retain a vehicle seized as contraband in order to use and operate the vehicle for official purposes, the following procedure shall be in effect:

- a. (1) The Attorney Representing the State shall confirm with the Seizing Agency that the Seizing Agency wishes to use the vehicle for official purposes; (2) Search NADA and/or KBB, as well as confer with the Seizing Agency to determine a reasonable estimated market value of the vehicle; (3) Calculate the percentage of the estimated market value to be disbursed to the Hays County District Attorney's Office; (4) Email an agent with authority at the Seizing Agency to confirm that, based on the estimated market value of the vehicle and the amount to be disbursed to the Hays County District Attorney's Office, the Seizing Agency still desires to use the vehicle for official purposes; (5) Once receiving confirmation, in writing, of the Seizing Agency's continued desire to use the vehicle for official purposes, the Attorney Representing the State shall proceed with drafting the Final Judgment of Forfeiture and deliver it to a judge for signature; and (6) the Attorney Representing the State shall then withhold the calculated percentage of the estimated market value to be disbursed to the Hays County District Attorney's Office (as determined from the percentage breakdowns in sections (I)(A)-(C) above) from the next disbursement issued by the Attorney Representing the State.
- b. If the situation arises where the next disbursement issued by the Attorney Representing the State will not cover the calculated percentage to be withheld, the Attorney Representing the State shall continue to withhold from future disbursements until the full percentage of estimated market value owed to the Hays County District Attorney's Office is paid in full.

II. Forfeited and Abandoned Property Under Chapter 18, Texas Code of Criminal Procedure

With respect to all forfeited property seized in connection with a violation of Chapter 18, in consideration of the services rendered by the Parties to this Agreement for the seizure and forfeiture of the said contraband, the Agency and the Attorney Representing the State agree as follows, after the deduction of applicable court costs:

- A. Abandoned, Non-Monetary Property—Article 18.17.** In the event an Agency seizes property other than contraband subject to forfeiture under Chapter 59, which is not held as evidence to be used in any pending case, and has since become unclaimed or abandoned, the Agency shall give notice to the Attorney Representing the State of the unclaimed or abandoned property. Upon notice, the Attorney Representing the State shall comply with the provisions set out in Article 18.17 regarding sending notice to the owner of the property. If the property is non-monetary and is still unclaimed or abandoned after the proper notice requirements are met, the Agency shall

retain the property and either use and operate the vehicle for official purposes or auction the property. The Agency is to retain all proceeds in regards to any auction made pursuant to Article 18.17.

- B. Abandoned, Monetary Property—Article 18.17.** In the event an Agency seizes property other than contraband subject to forfeiture under Chapter 59, which is not held as evidence to be used in any pending case, and has since become unclaimed or abandoned, the Agency shall give notice to the Attorney Representing the State of the unclaimed or abandoned property. Upon notice, the Attorney Representing the State shall comply with the provisions set out in Article 18.17 regarding sending notice to the owner of the property. If the property is monetary and is still unclaimed or abandoned after the proper notice requirements are met, the proceeds shall be distributed as follows: the Agency shall retain 70%, to be deposited in the Agency’s fund, and the Attorney Representing the State shall retain 30%, to be used for the official purposes of the Attorney’s office.
- C. Gambling Paraphernalia, Prohibited Weapons, and Criminal Instruments—Article 18.18.** In the event of a final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving an obscene device or material, for an offense involving child pornography, or for an offense involving a scanning device or re-coder, not later than the 30th day following conviction, either the court entering judgment on the conviction, the prosecuting attorney, or the law enforcement agency which seized the property shall file a motion for an order of destruction or forfeiture to the state.
- a. If there is no prosecution or conviction following the seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the property to show cause why the property seized should not be destroyed or forfeited. The magistrate, on the motion of the Agency, shall order the weapon destroyed or forfeited to the Agency unless a person shows cause as to why the property should not be destroyed or forfeited.
 - i. The Seizing Agency shall make a motion in a timely manner after the time at which the Seizing Agency is informed in writing by the Attorney Representing the State that no prosecution will arise from the seizure.
 - b. If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of the property or proceeds and the person’s interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not prohibited property and that he is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Section C above.

D. Seized Weapons—Article 18.19. In the event the Agency seizes weapons in connection with an offense involving the use of a weapon or an offense under Penal Code Chapter 46, if there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall, before the 61st day after the date the magistrate determines that there will be no prosecution or conviction, notify in writing the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate. The magistrate shall order the weapon returned before the 61st day after the date the magistrate receives a request from the person. If the weapon is not requested before the 61st day after the date of notification, the magistrate shall, before the 121st day after the date of notification, order the weapon destroyed or forfeited to the state. If the magistrate does not order the return, destruction, or forfeiture of the weapon within the applicable period, the Seizing Agency may request an order of destruction or forfeiture of the weapon from the magistrate.

a. A person either convicted or receiving deferred adjudication under Chapter 46 of the Penal Code is entitled to the weapon seized upon request to the court in which the person was convicted or placed on deferred adjudication. However, the court entering the judgment shall order the weapon destroyed or forfeited to the state if:

- i. The person does not request the weapon before the 61st day after the date of the judgment of conviction or the order placing the person on deferred adjudication;
- ii. The person has been previously convicted under Chapter 46 of the Penal Code;
- iii. The weapon is a prohibited weapon defined under Chapter 46 of the Penal Code;
- iv. The offense for which the person is convicted or receives deferred adjudication was committed in or on the premises of a playground, school, video arcade facility, or youth center; or
- v. The court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals

b. If the person found in possession of a weapon is convicted of an offense involving the use of the weapon, before the 61st day after the date of conviction the court entering judgment of the conviction shall order destruction of the weapon or forfeiture. If the court entering judgment of conviction does not order the destruction or forfeiture of the weapon within the applicable period, the Agency may request an order of destruction or forfeiture of the weapon from a magistrate.

c. This section does not apply to prohibited weapons. Prohibited weapons are treated according to Section C above.

- E. Regarding Sections A through D listed above, the Attorney Representing the State will issue the proper notices upon request of the Agency. The Attorney Representing the State will also draft and file the proper motions and orders upon request of the Agency.
- F. Publication costs in regards to Sections A and B listed above are to be administered by the Agency.

III. K-9 Response Situations

If, in connection with a seizure and forfeiture described in this Agreement, an Agency requests and obtains the services of a drug-detecting K-9 in service with another Agency, and that drug-detecting K-9 contributes to the evidentiary value of the seizure, the two Agencies shall confer on a case-by-case basis regarding what percentage of the forfeiture shall be disbursed to the Agency in which provided the drug-detecting K-9.

- A. Hays County Narcotics Task Force Case. Provided that the Hays County Narcotics Task Force is comprised of San Marcos Police Department officers and Hays County Sheriff's Office deputies, in the case that the Hays County Narcotics Task Force is the Agency providing the drug-detecting K-9, of the percentage determined by the two Agencies, the forfeiture distribution shall be further divided as follows: 50% of the proceeds attributable to the seizing agency to the San Marcos Police Department, and 50% of the proceeds attributable to the seizing agency to the Hays County Sheriff's Office.

IV. General Forfeiture Terms

- A. The Attorney Representing the State may transfer forfeited property, such as vehicles or other conveyances, to the Seizing Agency to maintain, repair, use, operate, and put into service for official business. The Parties may agree in writing to allocate such forfeited property in a manner that best serves the operational interests of the Parties.
- B. This Agreement shall apply to all contraband forfeited pursuant to Chapter 59 of the Texas Code of Criminal Procedure, and other seizures and forfeitures that occur from and after the effective date of this Agreement. In the absence of an individual written agreement for a specific seizure, the distribution of forfeited property, or the proceeds from the sale thereof, shall be in accordance with this Agreement.
- C. The Parties agree that special circumstances may dictate that the proceeds of forfeited property be shared with other law enforcement agencies. In those special circumstances, the Attorney Representing the State, the Agency, and the other law enforcement agency(s) may agree to allocate property or proceeds in accordance with a written agreement among the Attorney Representing the State, the Agency, and the other law enforcement agency(s), to be negotiated on a case-by-case basis.

- D. If money is seized, the Attorney Representing the State shall, before disposition in accord with this Agreement, handle such funds in accordance with applicable statutes.
- E. All disbursement of forfeited funds shall be made on a quarterly basis upon execution of a final judgment that has been duly served, and after the deduction of all reasonable costs associated with the maintenance of said forfeited property. Property shall be forfeited to the State when the forfeiture judgment is final and no motion for new trial or appeal has been filed.
 - a. The Seizing Agency shall remit an invoice depicting all reasonable costs associated with the maintenance of said forfeited property to the Attorney Representing the State upon the Attorney Representing the State's request.
- F. The Parties and the subject matter of this Agreement, including the percentage allocations identified herein, are subject to legislative or regulatory changes.

IV. General Terms and Conditions

- A. This Agreement shall become effective on the date it is signed by the last of the Parties to this Agreement. This Agreement shall remain in effect until terminated.
- B. The Parties shall comply with all local, state, and federal laws and regulations applicable to the subject matter of this Agreement, including but not limited to Chapter 59 of the Texas Code of Criminal Procedure.
- C. Any party may terminate this Agreement, at any time and for any reason, by giving the other party thirty (30) calendar days written notice. Property that is the subject of any forfeiture proceeding that commences prior to the termination date of this Agreement shall be disposed of pursuant to this Agreement. Any party may terminate this Agreement for cause with written notice to the other parties which shall become effective immediately upon the other party's receipt of the notice.
 - a. Termination by one of the parties to this Agreement shall not result in a termination of the entire Agreement. Rather, termination by one of the parties to this Agreement shall result in an amendment to the Agreement.
- D. No modification or amendment to this Agreement shall become valid unless in writing and signed by both Parties.
- E. Any failure of a Party to this Agreement, at any time, to enforce or require the strict keeping of any provision of this Agreement shall not constitute a waiver of such provision, and shall not affect or impair same or the right of that Party at any time to avail itself of same.

- F. This Agreement constitutes the entire agreement between the Parties with regard to the matters made the subject of this Agreement. There are no verbal representations, inducements, or other agreements between the Parties.
- G. The Attorney Representing the State is subject to audit and inspection, at any time during normal business hours and at a mutually agreed upon location. The Attorney Representing the State shall provide all reasonable facilities and assistance for the safe and convenient performance of any audit or inspection. The Attorney Representing the State shall keep all records and documents regarding this Agreement for the term of this Agreement and for four (4) years after the termination of this Agreement.
- H. Any notice required or permitted under this Agreement shall be directed to the Parties at the addresses shown below and shall be deemed received: (1) when delivered in hand and a receipt granted; (2) three calendar days after it is deposited in the United States mail; or (3) when received if sent by confirmed facsimile or confirmed email.
- I. The signatories hereby represent and warrant that they have full and complete authority to execute this Agreement.

J. *Dispute Resolution.*

i) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Contract. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

ii) Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in

consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

iii) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon) any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

(SIGNATURES FOLLOW ON THE NEXT PAGE(S))

Attorney Representing the State:

Signature

Printed Name

Title

Hays County Sheriff's Office

Signature

Printed Name

Title

San Marcos Police Department:

Signature

Printed Name

Title

Kyle Police Department:

Signature

Printed Name

Title

Buda Police Department:

Signature

Printed Name

Title

Hays County Narcotics Task Force:

Signature

Printed Name

Title

Texas State University Police Department:

Signature

Printed Name

Title

Date Agreement Executed: _____